



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 25, 1995

Mr. John Richards  
Assistant General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR95-1137

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36299.

The Texas Department of Health (the "department") received an open records request from an attorney representing a psychiatric hospital. Specifically, the requestor seeks a particular "Report of Contact" created as part of the department's investigation of the circumstances surrounding the drowning death of a child while in the hospital's care. You contend that because the department conducted its investigation pursuant to chapter 262 of the Family Code, the requested information is confidential and must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that section 261.201(a) of the Family Code makes the requested information confidential. See Act of April 20, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 262 (Vernon); Act of May 25, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3924 (Vernon). Section 261.201(a) of the Family Code provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:<sup>1</sup>

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<sup>1</sup>This ruling does not address whether a release of the information to the hospital pursuant to 25 TAC § 134.71(i)(7) would be "consistent with" the purposes of chapter 262 of the Family Code.

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

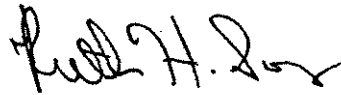
(2) except as otherwise provided in this section, *the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.*

Act of May 25, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3924 (Vernon) (emphasis added, footnote added). The department has authority to investigate allegations of neglect of children in facilities that it operates, licenses, certifies, or registers. Act of April 20, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 262-63, 265 (Vernon); *see also id.* at 259-60 (defining "neglect"). Therefore, the department is an appropriate authority to investigate allegations of neglect of a child in a hospital.

You state that the department has developed rules under former Family Code section 34.08(a), which are set out in Title 25 of the Texas Administrative Code. However, none of those rules authorize the release of the "Report of Contact" in this instance. Accordingly, the department must withhold the requested information pursuant to section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/RWP/rho

Ref.: ID# 36299

Enclosures: Submitted document

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(w/o enclosures)